

Advisory Opinion

IECDB AO 2005-13

August 15, 2005

Greg Anliker
Division Administrator
Iowa Department of Elder Affairs
3rd Floor Clemens Bldg., 200 10th Street
Des Moines, Iowa 50309-3609

Dear Mr. Anliker:

This opinion is in response to your email letter of July 6, 2005, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as a Division Administrator for the Iowa Department of Elder Affairs (IDEA). You advise us that IDEA manages educational conferences that are partly funded by fees charged to vendors and sponsors. You believe that both vendors and sponsors receive something of value (visibility, recognition, et cetera) in return for the fees that they pay. You desire clarification on whether new Iowa Code section 8.7 would require IDEA to report these fees to the Iowa Ethics and Campaign Disclosure Board.

QUESTION:

Are fees received from sponsors and vendors of an educational conference reportable "gifts, bequests, or grants" under Iowa Code section 8.7?

OPINION:

In 2005 Iowa Acts, House File 810, section 27, the General Assembly enacted new Iowa Code section 8.7 that requires, in part, "all gifts, bequests, and grants received by a department or accepted by the governor on behalf of the state" to be reported to the Board.

In applying this language to your question, clearly the fees you describe are not “bequests or grants.” The issue then becomes whether or not these fees constitute “gifts” and become reportable under the law.

Iowa Code section 8.7 does not define the term “gift.” However, the Board also enforces Chapter 68B the “Government Ethics and Lobbying Act”¹ that includes Iowa Code section 68B.2(9) defining a “gift” as follows:

“...a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.”

We believe that this definition is fair and reasonable to apply to your question of reportable “gifts” under Iowa Code section 8.7. It is the definition that applies to all state officials and state employees concerning gifts that they personally receive under Iowa Code section 68B.22.

As a general rule, a “fee” does not constitute a “gift” as a “fee” denotes a payment in exchange for the providing of services or items. However, it is possible for a department to charge a fee that so clearly exceeds the value of the service or item being provided that the fee is not reasonably related to the providing of the service or item. In such situations, the excess portion of the “fee” has become a “gift” and would trigger the disclosure requirement of Iowa Code section 8.7.

In reviewing the materials you provided with your opinion request, it appears that the sponsors do receive a number of items in return for their sponsorship fees and clearly a sponsor receives more items in return for paying higher fees. In addition, the fees you charge for exhibit space and for lunch appear to be reasonable.

Therefore, the Board believes that the sponsorship and vendor fees that IDEA charges for its educational conferences are not reportable “gifts” under Iowa Code section 8.7.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ Prior to July 1, 2005, Chapter 68B was entitled the “Iowa Public Officials Act.” It was renamed the “Government Ethics and Lobbying Act” in 2005 Iowa Acts, House File 253, section 1.

